Supreme Court, U.S.
FILED
OCT 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

(3)

NO. 89-384

PHILIP J. BROWN, et al.,

Petitioners

v.

1250 TWENTY-FOURTH STREET ASSOCIATES
LIMITED PARTNERSHIP, et al.,

Respondents

---

# PETITIONERS' REPLY MEMORANDUM

---

PHILIP J. BROWN (PRO SE)
2613 P Street, N.W.
Washington, D.C. 20007

TABLE OF AUTHORITIES


| Case | Page(s) |
|---|---|
| Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986) . . . . . | 8, 10 |
| Hodosh v. Block Drug Co., Inc., 790 F.2d 880 (Fed. Cir.), cert. denied, 479 U.S. 827 (1986) . . . . . | 10 |
| Liljeberg v. Health Services Acquisition Corp. 108 S.Ct. 2194. . . . . | 8, 9 |
| Maier v. Orr, 758 F.2d 1578 (Fed. Cir. 1985) . . . . . | 10 |

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1989

NO. 89-384

PHILIP J. BROWN, et al.,

Petitioners

v.

1250 TWENTY-FOURTH STREET ASSOCIATES LIMITED PARTNERSHIP, et al.,

Respondents

# PETITIONERS' REPLY MEMORANDUM

Petitioners Philip J. Brown and William J. Brown hereby replies to the Brief In Opposition To Petition For Writ Of Certiorari ("Opposition") of Respondent 1250 Twenty-Fourth Street Associates

Limited Partnership ("Respondent").[1] Petitioners submit that Respondent makes a number of misleading statements as to the facts of this case and misstates the law. The Petitioners hereby submit the following to set the record straight.

## ARGUMENT

Respondent states, at page four of its Opposition, that the forgery of Philip J. Brown's signature was witnessed by the Petitioners' former attorney, Nicholas A. Addams. Respondent fails to mention, however, that at the time the forgery was allegedly witnessed, two of its own

---

[1] Petitioners admittedly filed the original petition without the signature of William J. Brown. Philip J. Brown did ask for and follow the direction of the Clerk's office and believed at the time that Mr. William J. Brown was properly joined as a Petitioner as he desired. B&W Management, Inc., appellant below, also desired to join as Petitioner but was unable to obtain required counsel due to the chilling effect of the decision below.

partners were trustees on a Deed of Trust on attorney Addams' office building.[2] This fact was hidden from Petitioner both by Mr. Addams and Respondent's agents, and was further obscured when at the time the Deed of Trust was released, the Certificate of Satisfaction noted that the original documents had been lost.[3] Petitioners strongly believe that, in addition to the reasons raised in the instant petition, their rights have been seriously impaired by the fact that their attorney was under the financial dominion of their adversaries. Respondent should not be allowed to deceive this Court as it has Petitioners.

---

[2] Respondent also fails to note that Mr. Addams was recently disbarred for misappropriating funds from and lying to a client.

[3] Strangely enough, Petitioners have possession of a copy of the original Deed of Trust documents at the same time Respondent's agents claimed the documents were missing.

Next, Respondent relies heavily on the fact that Petitioners did not raise the issue of Chief Judge Wald's partnership interest for over eight months. Respondent's position ignores the following: The U. S. Court of Appeals issued a per curiam decision on June 28, 1988, and Petitioners filed a petition for writ of certiorari at the end of September, 1988.[4] Certiorari was denied on November 14, 1988. It was only at this point did Petitioners begin to probe into the Financial Disclosure Reports ("FDRs") of the judges of the D.C. Circuit. The time that it took for Petitioners to diligently obtain the partnership documents from the State of California accounts for the most part of their delay in bringing their motion below. Careful review of the complex partnership agreements also took

---

[4] Petitioners inadvertently failed to include this fact in their petition as that petition was handled by outside counsel.

some time. Petitioners acted promptly upon receipt and thorough review of those documents. Petitioners should not be deprived of their rights simply because they took sufficient time to uncover the facts upon which this petition and the motions below are based.

Respondents also rely heavily on the statement issued by Chief Judge Wald in connection with the Court of Appeals Order dated April 5, 1989. As a preliminary matter, Petitioners does not believe that the applicable standard of law requires that Chief Judge Wald knew of the interest, but that she should have known. Chief Judge Wald explained in her statement that her failure to report the purchase of the partnership interest on her 1985 FDR was due to the advice of her husband's accountant. After that statement was issued, Petitioners retained an independent accounting expert to review the partnership

agreement and the FDR instructions who determined that the $20,000 purchase made on December 31, 1985 could not have had a negative net worth and should have been reported by the judge. Therefore, Petitioners do not and has not relied on Chief Judge Wald's statement when pursuing the motions below and this petition.

Most importantly, the facts presented by Petitioners are not a "total fiction" as claimed by Respondent and by Chief Judge Wald. The information was gleaned from actual certified documents obtained from the State of California. How Chief Judge Wald and her husband could have been unaware of the documents to which Petitioners had access or failed to notice the glaring presence of Messrs. Kolker and Naisbitt in those papers seems implausible to Petitioners.

Since Mr. Naisbitt never signed any of the O.P. partnership documents, it is

obvious that Mr. Kolker was principally involved. Mr. Kolker is known by Petitioners to be a social acquaintance of Judge Wald. The entire transaction appears to be a means for diverting a valuable asset to the Chief Judge's husband, who was experiencing business difficulties at the time due to the erosion of his law firm. The Wald's realized up to $250,000 or more capital gain.[5]

Lacking the first-hand knowledge that only Mr. Kolker, the Walds and the other members of the O.P. partnership had access to, Petitioners relied only on the actual

---

[5] Petitioners base this conclusion on the following: 1) Judge Wald, on her 1988 FDR, filed May 15, 1989, reported that the sale of the O.P. interest brought a capital gain of over $100,000 (no ceiling is placed on this valuation category); 2) The Walds owned a .6% interest in the partnership; 3) The building that was the sole asset of the partnership was assessed at over $45,000,000; 4) The building was sold by the partnership to Japanese investors, who typically pay a premium price for real estate, but in no case would pay less than assessed value, and; 5) .6% of $45,000,000 equals $270,000.

documentation that existed in connection with the O.P. partnership. That documentation provides the basis for Petitioners' claim that the Wald's had to know of Kolker's involvement, as Kolker's name appeared all over the earlier partnership papers to which Mr. Wald expressly agreed to be bound and made hand-written changes specifically excluding his client from the strict penalty provisions of the partnership agreement. The fact of that exceptional treatment alone, despite Chief Judge Wald's insistence to the contrary, creates the distinct impression on the part of Petitioners that the O.P. sale to Naisbitt was a sham, and that Mr. Wald was the intended recipient of part of that interest.

Petitioners also assert it is Respondent who has misread this Court's landmark rulings in Liljeberg v Health Services Acquisition Corp. 108 S.Ct. 2194 and Aetna

Life Insurance Co. v Lavoie, 475 U.S. 813 (1986).

The Liljeberg doctrine does not require absolute proof that a judge was aware of the conflict but rather whether an objective, reasonable person would think that she should have known. Obviously, Chief Judge Wald and her husband should have known of the facts for which she has disclaimed knowledge. Liljeberg stressed that it was appearances to the ordinary, reasonable person which were crucial to judicial inquiry. In the instant case, it clearly appears from the private and complex nature of the very profitable O.P. transactions that Chief Judge Wald would look favorably upon Mr. Kolker and his interests. Since the U.S. Court of Appeals Order of June 28, 1988 confirmed the ratification of an uncontested forgery by Mr. Kolker's client, Petitioners believes that they have been, consciously or

subconsciously, denied their right to impartial adjudication of this case.

Respondent's reliance on Hodosh v Block Drug Co., Inc. 790 F.2d 880 (Fed. Cir.), cert denied, 479 U.S. 827 (1986) and Maier v Orr, 758 F.2d 1578 (Fed. Cir. 1985) is similarly misplaced. This Court's decision in Aetna clearly supersedes those decisions in this case. The June 28, 1988 Order was a unanimous panel decision issued per curiam. The "leading role" standard elucidated in Aetna cannot therefore be applied since the input of each judge cannot be gleaned from the record (the Circuit's Chief Judge would surely have weighty input in any decision). The evaluation advanced by Justice Blackmun in his concurrence should be applied, whereby the violation of the Petitioners' due process rights occurred when Chief Judge Wald participated.

Respondent's statement that the

Petitioners have frequently moved for recusal or disqualification motions omits, significantly, that numerous judges have recused themselves in the proceedings. The Petitioners have been made wary by the many connections between judges and the parties to these proceedings and should not be penalized for circumstances over which they have no control. Also, Petitioners have moved to disqualify Chief Judge Bostetter and Judge Pratt but Respondent has mischaracterized these motions as well. Motions to disqualify Chief Judge Bostetter are currently pending and the seven motions to recuse Judge Pratt were actually two motions filed in a number of different cases over which Judge Pratt was presiding.

Judicial impartiality is a fundamental right under the Constitution. Infringement of this right affects all as it affects one. The issues presented by Petitioners herein address this fundamental concern and

warrant review by this Court.

## CONCLUSION

For the above and foregoing reasons, and those contained in their original petition, Petitioners respectfully submit that their Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit be issued.

Respectfully submitted,

Philip J. Brown (pro se)
2613 P Street, N.W.
Washington, D.C. 20007